IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.539 OF 2003

M/s. Ferburz Pharmaceutical ..Petitioner.
v/s.
M/s. Kopran Pharmaceuticals Ltd ..Respondent.

Mr.P.V. Sathe with Mr. N.K. Minocher Humji adv for the Petitioner.

Mr. B.B. Saraf i/b. Nankani and Associates, adv for the company.

CORAM: S.U. KAMDAR, J.

DATE : 9TH DECEMBER, 2004.

P.C.:

1. The present petition is filed on the ground that there is an outstanding amount due and payable by the respondent company to the petitioner in sum of Rs.9,06,450.71ps. with interest thereon at the rate of 12% per annum.

2. According to the learned counsel for the petitioner the said amount is due and payable on the basis of new arrangement arrived at which is reflected in Exhibit-D at page no.21. According to the said oral arrangement the respondent company was liable to

make payment of lumpsum amount towards raw-material and labour charges and it is the petitioner who was to discharge the liability of third party creditors who are the suppliers of the raw material. According to the learned counsel for the petitioner at the foot of the account there is no outstanding amount which can be adjusted against his labour charges as there is a short fall in the amount paid by the respondent company. On the basis of the said oral arrangement the petitioners have worked out the aforesaid claim.

3. On the last occasion when the matter was heard by me on 25.11.2004, I directed the respondent company to indicate the rate of labour charges on the basis of which labour charges are computed. In pursuance of the said direction the petitioner has filed an additional affidavit before me dated 6.12.2004 in which the details of the labour charges are worked out.

4. The said affidavit inter-alia gives break-up of the claim of Rs.9,61,450.71/-. One of the annexure thereof gives details of statement showing labour charges, excise and sales tax payable therein for the period 1998-99. As and by way of example, I am taking into consideration one bill i.e Bill no.9 dated 12.1.1999. In the said statement under foot note it

has been mentioned that the amount of labour charges are calculated at the rate of Rs.1.28 per pack of 25gms. I have seen the original bill no.9 dated 12.1.1999 and I find that the rate of labour charges prescribed therein is Rs.7.04/-. In view thereof there is a clear cut dispute pertaining to the rate of labour charges of the amount to be claimed and as and by way of labour charges. The so called oral pleadings pleaded by the petitioner is also required to be established on trial. The learned counsel for the petitioner however contended that the rate differences in the statement and in the bill is because the rate provided in the bill not only includes the labour charges but also on the basis of raw-material put in inrespect of the said goods. I am of the opinion that this aspect of the matter requires consideration and determination between the parties in an appropriate proceedings. In my opinion the company petition for winding up of the petition cannot be maintained in view of serious disputes inrespect of the claims raised by the respondent company.

5. In view thereof, I do not find that the present petition has any merits and accordingly dismiss the same. However, there shall be no orders as to costs.

SD/-

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